

1 **JESSE LASLOVICH**
2 **BRETT O'NEIL**
3 Special Deputy Ravalli County Attorneys
4 Special Assistant Montana Attorneys General
5 Office of the Commissioner of Securities and Insurance
6 Montana State Auditor
7 840 Helena Ave
8 Helena, Montana 59601
9 (406) 444-2040

10 Attorneys for Plaintiff

11 **MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT,**
12 **RAVALLI COUNTY**

13 STATE OF MONTANA,)	Cause No.: DC-11-117
)	
14 Plaintiff,)	
)	STATE'S OBJECTIONS TO
15 vs.)	DEFENDANT'S EXHIBITS
)	
16 HARRIS HIMES,)	
)	
17 Defendant.)	

18 Pursuant to the Court's Order dated March 4, 2013, the State of Montana, through its
19 counsel of record, Jesse Laslovich and Brett O'Neil, files these objections to Defendant's
20 Exhibits.

21 The Court ordered that all discovery be exchanged by September 28, 2012. Both the
22 State and the Defendant complied with that order. The Defendant's Exhibit List relating to that
23 order is provided as Exhibit 1. The Court further ordered both the State and the Defendant refine
24 their exhibits and provide those to opposing counsel two weeks prior to trial (Sept. 2, 2013). The
25 State did so. The Defendant provided the State with his list of exhibits on September 5, 2013.
The Defendant began emailing his actual proposed exhibits to the State on September 5, 2013,

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PAIGE TRAUTWEIN, CLERK
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1 and submitted his final exhibit at 11:53 p.m., September 6, 2013. The State has been unable to
2 organize the Defendant's exhibits as of the date of this filing.

3 In its March 4, 2013, Order, the Court also ordered both the State and the Defendant file
4 objections, other than foundation, at least five days before trial. As more fully stated below, the
5 State objects to most of the Defendant's proposed exhibits based on hearsay, relevance, and
6 prejudicial/probative value. Because the deadline has long passed, the State objects to all
7 documents not identified in Exhibit 1, the State's Bates numbered discovery documents, or in
8 previous Court filings. Ultimately, it appears most previously unidentified exhibits were in the
9 Defendant's possession for several months, if not years, prior to submitting them to the State on
10 September 5-6, 2013, in direct contradiction to this Court's order regarding the submission of
11 Exhibits.

12 The State will address each objection, other than timeliness, in the order presented in the
13 Defendant's September 5, 2013 Exhibit List.¹

14 EXHIBIT A: MONTANA SECURITIES DEPARTMENT INVESTIGATION REPORT, TO INCLUDE LYNNE
15 EGAN'S INTERVIEW ON DVD AND TRANSCRIPT OF INTERVIEW. **OBJECTION. HEARSAY. RULE**
16 **403.**

17 The Report fits within the definition of Mont. R. Evid. 801 and is therefore hearsay.
18 There is no exception to an investigative report. In fact, it is specifically excluded from the
19 Public Records and Reports rule, which states that "investigative reports by police and other law
20 enforcement personnel" are not an exception to the hearsay rule. Rule 803(8)(i). Ms. Egan, as a
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24 ¹ The State does not know if the Defendant has further exhibits other than those identified in his Exhibit List dated
25 September 5, 2013. To the extent he does, the State has advised the Defendant that the State will object to such
proposed exhibits. Additionally, it is unclear to the State if all of the exhibits have been supplied to the State, as
numerous emails with big attachments have been sent by the Defendant to the State. Most emails are only labeled as
"partial" exhibits and were very difficult to organize prior to the filing of these objections.

1 criminal justice investigator, is considered law enforcement personnel, and therefore, her report
2 is considered hearsay.

3 The State allowed for the DVD to be taped because Mr. Flaherty represented it would be
4 for his own education. Mr. Himes now wishes to piecemeal excerpts from that DVD when
5 Ms. Egan will be on the stand ready to be cross-examined by Mr. Himes (who also has a sworn
6 deposition of Ms. Egan by which he may attempt to impeach her). The State has not been
7 presented with the piecemeal DVD and the parties are one week before trial.

8 Rule 403 states that relevant evidence may be excluded if its probative value is
9 substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading
10 the jury, or by considerations of undue delay, waste of time, or needless presentation of
11 cumulative evidence. Throughout the DVD, Ms. Egan qualifies her statements by stating she
12 would need to review the record and she was not prepared to discuss the specific facts of this
13 case. Later, the State made her available for a deposition, of which the Defendant has a
14 transcript. Therefore, admission and viewing of the DVD would create undue delay and a waste
15 of time, given that (1) Egan was not prepared to comment exhaustively on the case at the time of
16 recording, and (2) the Defendant has another (more comprehensive) record of Egan's statements.
17 Most importantly, however, is that the Defendant will have the opportunity to cross-examine
18 Ms. Egan at trial and to the extent her testimony conflicts with her deposition testimony, he may
19 attempt to impeach her. The DVD, however, should be explicitly rejected. Should the Court
20 allow the DVD, however, it should be offered in its entirety, which is over three hours.
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1 EXHIBIT B: RAVALLI COUNTY ENFORCEMENT REPORT. OBJECTION. HEARSAY.

2 The Report fits within the definition of Rule 801 and is therefore hearsay. As noted
3 previously, investigative reports by police and other law enforcement personnel are not an
4 exception to the hearsay rule. The Report should be prohibited as an exhibit.

5 Additionally, The Montana Supreme Court previously affirmed a trial court's decision to
6 preclude cross examination based on the legal charges filed by the State. In *State v. Beavers*, the
7 Defendant attempted to cross examine a police officer who wrote a citation which included
8 language similar to reckless driving. *State v. Beavers*, 1999 MT 260, ¶¶ 35-36, 269 Mont. 340,
9 987 P.2d 371. The Defendant argued that the language influenced the prosecution to file those
10 charges. *Id.* The trial court precluded this line of testimony as irrelevant: “[w]e hold that since
11 **charging a defendant is a prosecutorial function and not that of the arresting officer,**
12 **Beavers had no basis for his line of questioning the police officer on grounds of reckless**
13 **driving. His questions were not relevant to the case.”** *Id.* at ¶ 36 (Emphasis Added).

14 In the present case, the Defendant seeks to cross examine witnesses on similarly
15 irrelevant grounds. None of the State witnesses listed by the Defendant, nor by the prosecution,
16 are prosecutors, nor did they determine which charges are necessary. The Court is well within its
17 authority to exclude this evidence as irrelevant.
18

19 EXHIBIT C: CRIMINAL BACKGROUND INFORMATION. OBJECTION. RELEVANCY,
20 PREJUDICIAL/WASTE OF TIME.

21 The Criminal Background of Mr. Bryant is precluded by Rules 401, 402, and 403.
22 Mr. Himes seeks to introduce this exhibit to demonstrate that Ms. Egan prepared a faulty
23 investigation because the report submitted to the CSI was inaccurate. However, the report
24 regarding Mr. Himes, the actual Defendant, is unquestioned. Neither report should be admitted
25 because they are not relevant to the charges pending against the Defendant.

1 EXHIBIT D: INFORMATION AND SUMMARIES PROVIDED BY GEOFFREY SERATA. OBJECTION.
2 HEARSAY.

3 These documents are hearsay under Rule 801. The only exception available to the
4 Defendant is that they may be used if it is first found that the documents were fresh in
5 Mr. Serata's mind when he drafted the summaries, and then that Mr. Serata while on either direct
6 or cross-examination, cannot remember the facts relating to those summaries. Rule 803(5).
7 Moreover, the documents do not constitute statements of a party-opponent under Rule 801(d)(2),
8 as Mr. Serata is not a party to this case.

9 EXHIBIT G: EMAIL CORRESPONDENCE. OBJECTION. VAGUE. HEARSAY. RELEVANCY.
10 TIMELINESS.

11 The Defendant has not identified specific emails which he will use in his case in chief,
12 but rather cited to an entire index of emails. The State understood the Court's order to require
13 each party to list specific exhibits fourteen days prior to trial. Because the State cannot gauge
14 which emails are to be used, and several of the emails provided by Mr. Serata are irrelevant to
15 both the State and the Defendant, the State must make a standing objection to all emails offered
16 by the Defendant as a part of this exhibit based on Hearsay and Relevancy grounds.

17 Additionally, the Defendant has indicated there is an original, scanned LOI (letter of
18 intent presumably). The State has not received that LOI. However, if the LOI is from a witness
19 who is not on the witness list, the LOI will be considered hearsay under 801.

20 EXHIBIT I: BATES # 305-663 SUBPOENAS FOR CREDIT CARD RECORDS AND RESULTS, TO INCLUDE
21 EXHIBIT OF AMERICAN EXPRESS PAYMENT COMPARISONS (I-664) (SCANNED). OBJECTION.
22 VAGUE. EXHIBIT NOT SUPPLIED.

23 This exhibit is vague inasmuch as it includes over 300 pages of documents. Moreover,
24 the scanned American Express payment comparisons have not been supplied as of the date of
25 this document.

1 EXHIBIT J: AUDITOR'S OFFICE SUBPOENA FOR HARRIS BANK AND RESULTS, TO INCLUDE ILLINOIS
2 SECRETARY OF STATE'S RENEWAL GOLDEN EQUITIES TRADING, AND COSTCO RECEIPT (J87, J788).
3 **OBJECTION. RELEVANCY.**

4 The documents lack probative value.

5 EXHIBIT K: NEWSPAPER ARTICLES CONCERNING HIMES, BLOGS RE CHARGES, ETC. K1, K2, ETC.
6 **OBJECTION. HEARSAY AND RELEVANCY.**

7 The documents are all hearsay and have no probative value to the pending charges.

8 EXHIBIT L: EXHIBITS CONCERNING DURATHERM: (DURATHERMSIPS.COM, VARIOUS ARTICLES,
9 FACEBOOK, OFFICIAL MEXICAN DESIGNATIONS AND DOCUMENTS, PROJECT ORDERS/PLANS (SCANS
10 ARE/WILL BE PROVIDED), TIME-LAPSE VIDEO OF HOUSE BEING ERECTED IN THREE DAYS
11 (MR. BRYANT WILL BRING—TOO LARGE TO DOWNLOAD), ACCOUNTING INFORMATION, RECORDS
12 FROM NOE SANCHEZ, PANEL TESTING, ETC.) (SCANS ARE/WILL BE PROVIDED) L 1, L 2, ETC.
13 **OBJECTION. VAGUE. HEARSAY. RELEVANCY.**

14 These documents are all hearsay. For example, there is a Facebook page of a person not
15 listed as a witness.

16 Additionally, introduction of this evidence is irrelevant to whether Defendant offered and
17 sold a security. Moreover, the evidence is irrelevant because it reflects evidence which is years
18 removed from the underlying sale of the unlicensed security. Thus, it does not qualify under
19 rules 401 and 402. Additionally, presentation of this evidence will waste time, will be
20 duplicative, and fails to satisfy the weighing analysis in Rule 403. .

21 EXHIBIT M: PHOTOGRAPHS – EXHIBITS IN SERATA'S SECOND DEPOSITION – INCLUDING
22 DATSOPOULOS' EMAIL, PHOTOGRAPHS FROM WENDY LEW, DOUG LEW, JAMES BRYANT, DIANA
23 BRYANT, NOE SANCHEZ, JARRED STRATTON CONCERNING THE FACTORIES, PANEL TESTING,
24 BUILDING PROJECTS, BEACHES, REFERRED TO IN SERATA'S DEPOSITIONS (SCANS ARE/WILL BE
25 PROVIDED). **OBJECTION. HEARSAY. VAGUE. RELEVANCY. NOT PROVIDED.**

26 The Court asked that specific exhibits be provided to the State 14 days prior to trial. The
27 Defendant has generally identified dozens of photos. Moreover, many of the photographs were
28 apparently taken years after the alleged criminal conduct, and thus are irrelevant to the
29 Defendant's guilt or innocence.

1 Additionally, the "Datsopoulos' email" apparently refers to an email from an assistant at
2 the offices of Datsopoulos, MacDonald & Lind, P.C., advising that the firm has no records
3 relating to the Defendant or Mr. Serata. The document is both hearsay under Rule 801, and is
4 irrelevant to whether the Defendant engaged in the alleged criminal acts. Presentation of this
5 evidence would also be a waste of time, confuse the issues, and otherwise be invalid under rule
6 403.

7 EXHIBIT N: RAVALLI COUNTY SHERIFF'S DOCUMENTS, INCLUDING SERATA'S RAP SHEET,
8 RECORDED INTERVIEW WITH DEPUTY ROBERT SMITH/TRANSCRIPT THEREOF, N 1, N 2, ETC.
9 **OBJECTION. HEARSAY. PREVIOUSLY RESOLVED BY ORDER OF THE COURT.**

10 The documents are inadmissible hearsay.

11 Additionally, the parties have previously established – and the Court has ordered – that
12 Mr. Serata's Rap Sheet may be used only for the limited purposes of discussing the incident
13 involving a bad check. Therefore, the Rap Sheet itself is inadmissible.

14 EXHIBIT O: SERATA'S BANK RECORDS, CHECKS, DEPOSITS, ETC. O 1, O 2, ETC. **OBJECTION.**
15 **RELEVANCY.**

16 The Defendant only recently subpoenaed Mr. Serata's bank documents - nearly two years
17 after this case was opened. Regardless, the financial records are irrelevant under Rule 401 to the
18 issue of whether the Defendant engaged in the alleged criminal conduct, since it is the
19 Defendant's actions, not the victims, which are at issue.

20 EXHIBIT P: VA FORMS 10-10EZ, 10-10EZR P 1, P 2. **OBJECTION. RELEVANCY.**

21 The State assumes these forms relate to Mr. Serata's registration for VA benefits.
22 Neither Mr. Serata's health issues nor his eligibility for VA benefits speaks even remotely to the
23 issues in this case. As a result, the forms are irrelevant and should be excluded.
24
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1 EXHIBIT Q: ORIGINAL UNSIGNED SUBSCRIPTION AGREEMENT, AUTHORSHIP, DATE OF PRINTING,
2 ETC. (SCANNED), LAPTOP HARD DRIVE Q 1, Q 2, ETC. OBJECTION. HEARSAY. BEST EVIDENCE
3 RULE, AUTHENTICATION.

4 The Defendant has not indicated what is contained on the Laptop Hard Drive. He did,
5 however, attach what appears to be a screen shot of computerized information showing a date.
6 If this is the full exhibit, which is unclear, the State would not have remotely sufficient time to
7 properly analyze the contents of the hardware. Due to these nondisclosures, Exhibit Q should be
8 excluded. Finally, the "Original Unsigned Subscription Agreement" is hearsay under Rule 801,
9 and not subject to any hearsay exception. The document is a computer document, easily
10 manipulated and altered. As a result, the Defendant cannot show proper authentication.
11 Moreover, it violates the Best Evidence Rule, as the agreement signed by Geoff Serata is the
12 only agreement that can be authenticated.

13 EXHIBIT R: OFFICIAL RECORDS/COURT RECORDS, HIMES, ET AL. VS. SERATA -- COMPLAINT AND
14 ANSWER, INFORMATION, AMENDED INFORMATION, AFFIDAVITS, CASES SERATA WAS INVOLVED
15 IN BACK EAST AND IN RAVALLI COUNTY, IMAGE OF TRUTH DISSOLUTION (SCANNED) R 1, R 2,
16 ETC. OBJECTION. RELEVANCY. HEARSAY. IMPROPER USE OF CHARACTER EVIDENCE.

17 The majority of documents under Exhibit R (i.e. the court documents) are hearsay under
18 Rule 801, and no exception applies. Moreover, the parties have previously established that the
19 bad check incident is the only criminal matter involving Mr. Serata which may be discussed at
20 trial. Therefore, no criminal documents involving Mr. Serata may be admitted.

21 Both the criminal and civil court documents are also inadmissible because they are
22 irrelevant to whether the Defendant committed the alleged criminal acts. Also, evidence of other
23 crimes, wrongs, or acts may not be used "to prove the character of a person in order to show
24 action in conformity therewith." Rule 404(b). Thus, the Defendant may use none of these
25 documents for such an impermissible character purpose.

1 EXHIBIT S: SERATA'S VARIOUS ARTICLES/COMMENTS (SCANNED) S 1, S 2, ETC. OBJECTION.
2 **RELEVANCY. HEARSAY.**

3 These documents are hearsay not subject to any exception. Additionally, the
4 documentation is irrelevant to the case.

5 EXHIBIT T: EGAN'S INTERVIEW WITH NOE SANCHEZ (BATES #788) AND SANCHEZ'S
6 CONTRADICTORY AFFIDAVIT – T 1. OBJECTION. HEARSAY.

7 The Sanchez contact report/interview summary and Sanchez' affidavit are both hearsay
8 not subject to any exception. Moreover, the Defendant has subpoenaed Sanchez to testify at
9 trial. Thus, Sanchez will have the opportunity to testify in person to his personal observations,
10 and the hearsay documents should be excluded.

11 EXHIBIT U: LETTERS FROM PATRICK FLAHERTY AND HARRIS HIMES TO SERATA OFFERING
12 MEDIATION U 1, U 2. OBJECTION. RELEVANCY. PREJUDICIAL/CONFUSING AND MISLEADING.
13 IMPROPER USE OF CHARACTER EVIDENCE. PREVIOUSLY RESOLVED BY ORDER OF THE COURT.

14 The documents under Exhibit U have already been excluded as memorialized by this
15 Court's August 13, 2013, Order, wherein this Court granted the State's Motion to Exclude
16 Exhibits 9 and 10 of the Defendant's Exhibits due to the above reasons raised by the State.

17 EXHIBIT V: RECORDS RE: MONTANA DEPT. OF LABOR AND INDUSTRY, PROFESSIONAL LICENSEE
18 LIST AND RECEIPT V 1, V 2, ETC. OBJECTION. RELEVANCY. HEARSAY.

19 These documents have no relevance to any of the charged crimes and are inadmissible
20 hearsay. This exhibit should be excluded accordingly.

21 DATED this 9th day of September, 2013.

22
23 By: 

24 **JESSE LASLOVICH**
25 **BRETT O'NEIL**

Special Deputy Ravalli County Attorneys

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Hon. Loren Tucker
5th Judicial District Court
2 S. Pacific #6
Dillon, MT 59725

Hubbell

Expert Witnesses

70. Walt Kero, CPA and Securities Expert
2620 Connery Way
Missoula, MT 59808

-- His rebuttal testimony will relate to the State's accounting for Duratherm, if any
-- also that Mr. Himes did not receive remuneration for the transactions
referenced in the security counts of the Amended Information under any
reasonable accounting principles or principles of security law.

71. Gregg Olson, CPA
619 S.W. Higgins Ave.
Missoula, MT 59803

-- His rebuttal testimony will relate to the State's accounting for Duratherm, if
any.

72. All witnesses listed by the State in its discovery and discovery documents;

73. Defendant reserves the right to supplement as discovery progresses.

74. Witnesses who are out of state, over 100 miles from the site of the Trial, or are unwilling to
provide material testimony at the Trial will be asked to testify by way of perpetuation
deposition or with court approval by a live video conference feed from a remote location,
pursuant to §§ 46-15-201, 46-15-202 and 46-15-204, M.C.A.

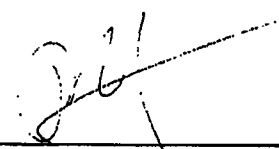
EXHIBITS

Defendant may introduce the following Exhibits at the Trial of this matter.

1. The State's Investigative File or portions thereof.
2. CD of Interview by Detective Smith of Serata and transcription of the same;
3. All depositions taken with Exhibits
4. Demonstrative Exhibit – available for inspection at Pat Flaherty's Office which is a
portion of the Duratherm SIPS panel.
5. SIPS Treatise(s) (to be supplied) showing the efficacy of Structural Insulated Panels
6. Pat Navarro's Training Protocols – promised to be attached to his deposition at J-51
7. Come Clean letter – J-52

8. Photo of Rosa Maria Iglesias.
9. June 8, 2012 letter to Jesse Laslovich and Brett O'Neil "Acceptance to Offer to Mediate) and attached letter from Harris Himes to Geoff Serata
10. June 8, 2012 letter of Himes to Serata with \$300 check.
11. Defendant will supplement this response in a timely fashion as discovery is ongoing.
12. Impeachment and rebuttal exhibits are reserved.

DATED this 21 day of September, 2012

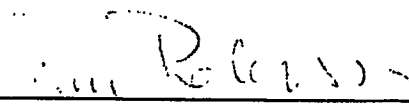


PATRICK F. ELAHERTY
Attorney for Defendant

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that a copy of the foregoing was duly served upon the respective attorneys for each of the parties entitled to service by depositing a copy in the United States mails, postage paid, addressed to each at their last known address as shown below, on the 21 day of September, 2012.

Jesse Laslovich and Brett O'Neil
Special Deputy Ravalli County Attorneys
Special Assistant Montana Attorneys General
Office of the Commissioner of Securities and Insurance
Montana State Auditor
840 Helena Avenue
Helena, MT 59601



COPY

**MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT,
RAVALLI COUNTY**

STATE OF MONTANA,)	Cause No.: DC-11-117
)	
Plaintiff,)	
)	ORDER REGARDING STATE'S
vs.)	OBJECTIONS TO DEFENDANT'S
)	EXHIBITS
HARRIS HIMES,)	
)	
Defendant.)	

The State of Montana, through its counsel of record, Jesse Laslovich and Brett O'Neil, filed objections to exhibits identified in Defendant's September 5, 2013 Exhibit list. Good cause appearing,

IT IS HEREBY ORDERED the State's objection to:

Exhibit A is ☐ Overruled ☐ Sustained.

Exhibit B is ☐ Overruled ☐ Sustained.

Exhibit C is ☐ Overruled ☐ Sustained.

Exhibit D is ☐ Overruled ☐ Sustained.

Exhibit G is ☐ Overruled ☐ Sustained.

Exhibit I is ☐ Overruled ☐ Sustained.

1 Exhibit J is ☐ Overruled ☐ Sustained.

2 Exhibit K is ☐ Overruled ☐ Sustained.

3 Exhibit L is ☐ Overruled ☐ Sustained.

4 Exhibit M is ☐ Overruled ☐ Sustained.

5 Exhibit N is ☐ Overruled ☐ Sustained.

6 Exhibit O is ☐ Overruled ☐ Sustained.

7 Exhibit P is ☐ Overruled ☐ Sustained.

8 Exhibit Q is ☐ Overruled ☐ Sustained.

9 Exhibit R is ☐ Overruled ☐ Sustained.

10 Exhibit S is ☐ Overruled ☐ Sustained.

11 Exhibit T is ☐ Overruled ☐ Sustained.

12 Exhibit U is ☐ Overruled ☐ Sustained.

13 Exhibit V is ☐ Overruled ☐ Sustained.

14 The Clerk of Court will please file this Order and distribute a copy to the parties.

15 DATED September ____, 2013.

16
17 _____
18 **LOREN TUCKER**
19 District Judge
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